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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:
OCT 28 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds 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:

[REDACTED]

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Tariq Syed
for
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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 [REDACTED] 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 and the mother of a United States citizen child. She 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 husband and daughter.

The Acting District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 4, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Service (USCIS) "erroneously denied [the applicant's] I-601 waiver" as "evidence already on record and documents submitted in support of appeal unequivocally establish the extreme nature of hardship that [the applicant's husband] would suffer in the case of the [a]pplicant's denial of a visa." *Form I-290B*, filed July 8, 2008. Additionally, counsel claims that USCIS "erronenously [sic] relied on case law that had been long overruled by recent BIA decision on extreme hardship." *Id.* The AAO notes that the cases cited by the Acting District Director are used to illustrate various scenarios of extreme hardship.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant's husband in Spanish¹, and letters from [REDACTED] regarding the applicant's daughter. The entire record was reviewed and considered, with the exception of the Spanish language statements, in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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-

....

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As statements from the applicant's husband are in Spanish and are not accompanied by an English-language translation, the AAO will not consider them in this proceeding.

(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.

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- (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 record indicates that the applicant entered the United States on January 23, 2002 without inspection. In August 2007, the applicant departed the United States.

The applicant accrued unlawful presence from January 23, 2002, the day she entered the United States without inspection, until August 2007, when she departed the United States. The applicant is seeking admission into the United States within ten years of her August 2007 departure. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 daughter 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-Moralez*, 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 (Board) 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 [REDACTED] finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant’s husband if he relocates to [REDACTED]. In counsel’s appeal brief dated July 28, 2008, counsel states the applicant’s husband is a long time resident of the United States and “[i]t would be devastating for [the applicant’s husband] to abandon the United States and his well-established career in order to relocate to an unfamiliar country.” Counsel claims that

if the applicant's husband joins the applicant in [REDACTED], he "would be unable to obtain employment in that country and, in the event of getting a job, it would not be nearly lucrative enough to provide for [the applicant], and minor children in [REDACTED]." Counsel states the applicant's husband "provides financial support for [the applicant] and child." Counsel also states the applicant "is aware of the unfavorable country conditions that would severely impact her and her family's living there on a permanent basis.... The economic and medical conditions in [REDACTED] are in no way comparable to those in the United States." In a letter dated August 23, 2007, [REDACTED] indicates that he "would be greatly worried if the [applicant's daughter] had to move to [REDACTED]." [REDACTED] states the applicant's daughter "needs continued monitoring of her diet and caloric intake" and he does not believe she would get the same standard of care in [REDACTED]. Counsel claims that the applicant and her husband "are living in constant fear of the possible disease their child will contract in [REDACTED] and the lost educational opportunities that will be experienced in [REDACTED]." The AAO notes the concerns of the applicant and her husband.

The AAO acknowledges that the applicant's husband has resided in the United States for many years; however, he is a native of [REDACTED] and it has not been established that he does not speak Spanish or that he has no family ties to [REDACTED]. In fact, the AAO observes that the applicant's husband writes in Spanish. Additionally, the AAO notes the record fails to contain documentary evidence, e.g., country conditions reports on [REDACTED], that demonstrate that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. 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)). Regarding the applicant's daughter medical condition, the AAO notes that there is no evidence in the record that the applicant's daughter cannot receive treatment and/or monitoring for her medical conditions in [REDACTED] or has to remain in the United States to receive treatment and/or monitoring. The record also fails to demonstrate that the applicant's husband has any medical condition, physical or mental, that would affect his ability to relocate. Additionally, there are no claims made related to safety issues in [REDACTED]. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's husband would suffer extreme hardship if he joined the applicant in [REDACTED].

In addition, the record does not establish extreme hardship to the applicant's husband if he remains in the United States. Counsel states "[i]t is virtually impossible for the [applicant's husband] to imagine life without [the applicant] and partner. This family will be undeniably disrupted and utterly devastated if the [a]pplicant is not allowed to return to the United States." Counsel states the applicant "has built a life for herself in this country and has a loving family that she is taking care of in every way, as a dedicated mother and wife." Counsel also states "the economic strain that the [a]pplicant's departure to [REDACTED] would cause and is already causing to her family is undeniably an important factor." Counsel claims that the applicant's husband "is obligated to maintain two households since [the applicant]" is in [REDACTED] and his "current income is not sufficient to maintain [the applicant] in [REDACTED] and himself and his family in [REDACTED]." Counsel states the applicant "would not be able to find a job to support her family, due to her educational level and lack of employment history." The AAO notes the applicant's and her husband's financial concerns.

Counsel states the applicant's child would be "deprived of [the applicant's] love and affection and emotional support." In a letter dated August 30, 2007, [REDACTED] states the applicant's daughter "would greatly be emotionally distressed if she had to be separated from her family. Since she has a history of failure to thrive, [he] would not like to have her appetite decrease and to start to lose [REDACTED] weight which is common when a child is separated from a parent." The AAO notes the concerns for the applicant's daughter.

The AAO notes that the applicant failed to submit any documentation establishing that her husband is unable to support himself in her absence. Further, the AAO notes that the applicant has submitted no evidence to establish that she is unable obtain employment in [REDACTED] and, thereby, financially assist her husband from outside the United States. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's husband would experience, the AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

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

In proceedings for application for 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.