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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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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 29 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 [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 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 fiancée.

The district director found that the applicant failed to establish extreme hardship to his fiancée and denied the Form I-601 application for a waiver accordingly. *Decision of the Acting District Director*, dated April 23, 2008.

On appeal, the applicant's fiancée asserts that she will endure extreme hardship should the present waiver application be denied. *Statement from the Applicant's Fiancée on Form I-290B*, dated May 2, 2008.

The record contains statements from the applicant's fiancée; documentation regarding a prescription for the applicant's fiancée; documentation regarding the applicant's fiancée's teaching activities; a summary of the applicant's fiancée's income and expenses; a letter regarding the applicant's fiancée's counseling services, and; a copy of the applicant's fiancée's church card. The entire record was reviewed and considered in rendering a decision on the 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.

The record shows that the applicant entered the United States without inspection in or about August 1997 and he remained until May 2005. Accordingly, he accrued over seven years of unlawful presence in the United States. He now seeks admission pursuant to an approved Form I-129F petition for alien fiancée filed by his fiancée 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's fiancée 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 [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.

In the present matter, the applicant’s fiancée asserts that she will endure extreme hardship should the present waiver application be denied. *Statement from the Applicant’s Fiancée on Form I-290B* at 2. The applicant’s fiancée states that she is seeing a therapist and medical professionals for depression, anxiety, and psychosomatic stress disorders. *Id.* The applicant’s fiancée states that she is taking medication to help control some of the physical side effects associated with [REDACTED] and [REDACTED] social services. *Statement from the Applicant’s Fiancée*, dated May 28, 2008. The applicant’s fiancée cites a medical journal to support that the [REDACTED] is a [REDACTED]. *Id.* She states that she receives this [REDACTED]. *Id.* She asserts that, should she relocate to [REDACTED] she [REDACTED]

the difficulty in [REDACTED]

[REDACTED] *Id.*

The applicant's fiancée explains that she has received counseling for her [REDACTED] and that it has brought her comfort and coping strategies for dealing with [REDACTED] *Id.* at 2. She provides that she will be compelled to join the applicant and [REDACTED] should the present waiver application be denied, which will force her to stop her [REDACTED] with her current [REDACTED] *Id.* She stated that she will have difficulty finding treatment in [REDACTED] that she is unable to communicate fluently in [REDACTED] *Id.*

The applicant's fiancée previously stated that she will endure financial hardship should the applicant be prohibited from residing in the United States. *Prior Statement from the Applicant's Fiancée*, dated September 1, 2007. She explained that she is a music teacher and that she requires the applicant's assistance to meet her expenses including rent and insurance. *Id.* at 1. She stated that she is certified to teach in [REDACTED] and that her certification would not transfer internationally. *Id.* She asserted that there are few teaching positions in music and [REDACTED] *Id.* She explained that, should she attempt to maintain her employment in the United States, she would be required to travel between [REDACTED] and United States which would create a significant financial burden. *Id.*

The applicant's fiancée indicated that she has incurred financial expenses due to planning their wedding, currently totaling over [REDACTED] *Id.*

The applicant's fiancée stated that relocating to [REDACTED] would cause her to lose opportunities for higher education in the United States. *Id.* She indicated that she is not [REDACTED] and [REDACTED] thus she would need language training in order to continue to earn income in [REDACTED] *Id.* She stated that she has been planning to pursue a master's degree in the future in the United States, yet it would be impossible without the applicant's financial, moral, and physical support. *Id.* She asserted that it would be impracticable to pursue this goal while residing in [REDACTED] *Id.*

The applicant's fiancée explains that all of her relatives reside in the United States and that they are a close family. *Id.* She expressed that she would endure [REDACTED] should she reside separately from them. *Id.* She indicated that she has resided in the United States for her entire life, and that she has close community ties in [REDACTED] due to her employment as an educator and youth counselor. *Id.* She stated that she also has community ties in [REDACTED] where she is established as a general music specialist. *Id.*

The applicant's fiancée stated that she and the applicant are members of the [REDACTED] and that their [REDACTED] them to be married in one of their [REDACTED] *Id.* She indicated that relocating to [REDACTED] would impact her religious activities due to her lack of [REDACTED] ability. *Id.* at 1-2.

The applicant's fiancée explained that the applicant has been serving as a religious missionary in [REDACTED] for the previous two years, thus they have already been separated for a considerable amount of time. *Id.* at 2.

The applicant submitted a list of his fiancée's monthly income and expenses that reports that she earns [REDACTED] per month, and her expenses total [REDACTED] for rent, utilities, car insurance, groceries, gas, union dues, medical insurance, life insurance, car maintenance, savings, debt payments, and contributions to her [REDACTED] *Monthly Income Report*, undated. The applicant's fiancée indicated that a round-trip airline ticket to visit the applicant starts at approximately [REDACTED] which would create a significant shortfall in her budget. *Id.* at 1.

Upon review, the applicant has not shown that his fiancée will endure extreme hardship should the present waiver application be denied. The applicant has not established that his fiancée 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's fiancée states that she will endure financial hardship should the applicant reside outside the United States. The monthly income and expense report that the applicant provided for his fiancée indicates that she has little income remaining after she meets her expenses, and that she would face financial difficulty should she attempt to visit the applicant regularly in [REDACTED]. However, the applicant has not provided any documentation to support the income and expenses identified in the report, such as tax and wage reports from his fiancée's employment, banking records, copies of billing statements, or a copy of her lease. It is further noted that the income and expense report was submitted in approximately August 2007, yet the appeal was filed in May 2008. The applicant has not provided updated financial information for his fiancée. Thus, the AAO lacks documentation regarding the applicant's fiancée's present financial circumstances, and it is unable to conclude that she will face significant financial difficulty should she reside separately from the applicant.

The applicant's fiancée expressed that she will endure emotional hardship should she be separated from the applicant. She indicated that she has received counseling and [REDACTED] and [REDACTED]. The applicant submits a brief letter from [REDACTED] that states that his fiancée "is currently attending individual counseling" once per week, and that "[t]he focus of therapy has been learning to manage stress and deal with emotions." *Letter from [REDACTED]* dated May 28, 2008. However, the record lacks documentation from a mental health professional that identifies the applicant's fiancée's symptoms and [REDACTED] or the impact her [REDACTED] has on her daily life. The applicant provides documentation of a prescription for antidepressant medication for his fiancée, yet without further [REDACTED] the AAO is unable to conclude that it shows that his wife is experiencing emotional distress that rises to an extreme level.

The brief statement from the applicant's fiancée is not sufficient evidence to show by a preponderance of the evidence that she suffers from unusual and serious mental health issues. It is noted that the applicant and his fiancée have resided apart for a two-year period while he engages in missionary activities in [REDACTED] and the statement from his fiancée reflects that this separation was their choice. While it is understood that they now wish to reside together in the United States, this period of voluntary separation reflects that they each possess the emotional and physical ability to reside independently from one another. The AAO acknowledges that the separation of spouses often

involves significant psychological difficulty, and that the applicant's fiancée will face emotional consequences should she remain in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. However, the applicant has not provided sufficient explanation or documentation to distinguish his fiancée's emotional hardship from that which is commonly experienced when spouses reside apart due to inadmissibility.

All stated elements of hardship to the applicant's fiancée, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that his fiancée 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 shown that his fiancée will endure extreme hardship should she join him in [REDACTED] for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The AAO has carefully examined the documentation in connection with the applicant's fiancée's employment in the United States as a teacher, and it is evident that she has significant professional and community ties in this country. The record supports that the applicant's fiancée would face consequences should she depart the United States and become temporarily separated from her employment, community, and religious activities in the United States. The AAO acknowledges that these consequences come with financial and emotional costs, and due consideration is given to these challenges when assessing a total hardship to the applicant's fiancée.

As noted above, the AAO must examine the explanation and evidence in the record to determine if the applicant's fiancée's hardship can be distinguished from the common effects that occur when an individual relocates to another country due to the inadmissibility of a spouse. In the present matter, the applicant has not presented factors of hardship to his fiancée that are not commonly faced by families who relocate due to inadmissibility. The applicant's fiancée indicated that she will endure difficulty due to her lack of [REDACTED] yet adapting to a new language and culture is a common consequence when an individual joins a spouse abroad. The applicant's fiancée stated that the applicant has willingly resided in [REDACTED] for a two-year period to engage in [REDACTED] activities, thus the record supports that he has [REDACTED] there that would ease his fiancée's transition to life in [REDACTED].

The AAO again acknowledges that the applicant's fiancée was prescribed antidepressant medication in September 2007 and that she has attended counseling. As discussed above, the applicant has not submitted sufficient medical documentation or a report from a mental health professional to reflect the mental health challenges his fiancée has experienced that led to the prescription. For example, the AAO is unable to determine whether the applicant's separation from his fiancée has caused her mental health distress such that reuniting in [REDACTED] would significantly alleviate her difficulty. The applicant has not shown that his wife will continue to require treatment for mental health issues should she reside in [REDACTED].

The applicant has not provided information or documentation regarding his income or expenses in [REDACTED] such to show the circumstances his fiancée may face should she join him. Nor has the applicant provided any reports that support that his wife would lack access to employment in [REDACTED].

██████████ without fluency in the ██████████. The applicant has not provided documentation to support that his wife would be unable to work in her profession as a music teacher in ██████████. The applicant's fiancée indicated that her lack of ██████████ proficiency would impact her religious activities, yet the applicant has not established that his wife would be unable to practice her religion in ██████████ or that she would be unable to perform related community service there.

The AAO has considered all stated elements of hardship to the applicant's fiancée, should she reside in ██████████, in aggregate. Based on the foregoing, the applicant has not shown that she will suffer extreme hardship should she join him in ██████████ for the duration of his 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 his fiancée, as required for a waiver under section 212(a)(9)(B)(v) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.