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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

SEP 02 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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. 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.

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 District Director*, dated March 4, 2008.

On appeal, counsel for the applicant asserts that the applicant was unrepresented when she filed her Form I-601 application for a waiver and that she was unaware of the documentation she needed to submit, but that she now provides evidence to prove extreme hardship to her husband.

The record contains a statement from counsel on Form I-290B; statements from the applicant's husband; a note from a physician for the applicant's husband, and; documentation of vehicles and real property owned by the applicant's husband. 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 February 2005. She remained until or about June 2007. Accordingly, she accrued over two years of unlawful presence in the United States. 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 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 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.

On appeal, the applicant’s husband states that he was born in Houston, Texas, and that his immediate family including his parents reside there. *Statement from the Applicant’s Husband*, dated March 28, 2008. He explains that he will relocate to Mexico with the applicant if the present waiver application is denied, as he cannot remain in the United States without her. *Id.* at 1. He stated that he will be compelled to seek treatment for his depression if he remains separated from the applicant. *Id.* He explains that he left school after the 11th grade to work, and that he operates his own construction business. *Id.* at 1-2. He indicates that he employs approximately 15 individuals, yet he will be unable to operate his business from Mexico which will create significant financial hardship for him. *Id.* at 2. He provides that he will lose his four trucks and tools that he owns for his business should he relocate to Mexico. *Id.* at 3.

The applicant’s husband states that the applicant presently resides with her mother in Mexico in difficult economic circumstances. *Id.* at 2. He indicates that he will be compelled to reside with his mother-in-law in poor conditions if he relocates to Mexico, and that such experience will be hard for

him. *Id.* He explains that he owns a home in Houston, and that he will have to dispose of it should he relocate to Mexico because he will be unable to maintain it. *Id.* He provides that this will cause financial and emotional hardship for him. *Id.* He adds that he purchased an investment property that he is refurbishing, and that he will be unable to maintain the house from Mexico, creating additional hardship for him. *Id.* He notes that he will incur losses selling property in the current unfavorable real estate market. *Id.* at 2-3.

The applicant's husband explains that he speaks to his parents almost daily and that he depends on them emotionally. *Id.* at 3. He notes that he assists his parents financially, and that he would endure emotional hardship should he reside in Mexico and be unable to continue to help them. *Id.*

The applicant's husband previously stated that he has financial obligations in the United States as well as a need to support the applicant. *Prior Statement from the Applicant's Husband*, dated June 14, 2007.

The applicant provides a note from [REDACTED] who reports that her husband has had an increase in anxiety since becoming separated from her, and that the applicant's husband sought treatment on November 6, 2007. *Note from [REDACTED]* dated March 14, 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 asserts that he is enduring substantial emotional difficulty due to separation from the applicant, and that he may seek treatment for depression should he remain apart from her. The AAO has carefully examined the note from [REDACTED]. However, the note is brief and does not provide detail regarding the applicant's husband's symptoms or required treatment, if any. [REDACTED] issued his note on March 14, 2008, yet he referenced a single date on which the applicant's husband sought treatment, approximately four months prior to the note. Thus, the note does not constitute evidence of ongoing treatment for a mental health disorder. The AAO acknowledges that the separation of spouses often results in significant emotional hardship, and that the applicant's husband is enduring psychological hardship while he resides apart from the applicant. Yet, the applicant has not distinguished her husband's emotional difficulty from that which is commonly experienced when spouses reside apart due to inadmissibility.

The applicant's husband indicated that he has financial responsibility for the applicant while she resides in Mexico. It is evident that maintaining two households requires additional expenses. Yet, the applicant has not submitted financial documentation for her husband or herself that shows that they lack adequate income to meet their needs. The applicant has not shown that her husband is enduring financial hardship.

The applicant has not presented other elements of hardship should her husband remain in the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Considering all factors of hardship in aggregate, the applicant has not shown that her husband will suffer extreme hardship should he remain in the United States.

The applicant has not shown that her husband will endure extreme hardship should he join her in Mexico. As discussed above, the applicant has not provided documentation of her husband's income or expenses. Nor has the applicant provided information or documentation regarding her income or expenses in Mexico such to show the circumstances her husband may face. The record contains evidence that the applicant's husband owns vehicles and real property in the United States, and he indicated that he employs 15 individuals. While he stated that he cannot operate his business or maintain his properties from Mexico, the applicant has not submitted sufficient information or documentation in order for the AAO to determine whether her husband can operate his business through his employees, or whether he has sufficient resources to hire help with his houses while he resides in Mexico. Thus, the record lacks adequate documentation in order for the AAO to conclude that the applicant's husband would suffer significant financial hardship in Mexico.

The applicant's husband indicates that he assists his parents financially, and that he would be hindered in this effort should he relocate to Mexico. However, the applicant has not submitted any information or documentation regarding her mother- or father-in-law's economic circumstances such to show that they require assistance. The applicant's husband has not stated his level of financial support of his parents. Thus, the record does not show that his parents will endure financial challenges in his absence that will cause additional emotional hardship for him.

The AAO acknowledges that the applicant's husband will face significant hardship should he be separated from his parents, community, and business activities in the United States. However, these consequences are common results when an individual resides abroad due to the inadmissibility of a spouse. While such circumstances are difficult, the applicant has not established that they rise to the level of extreme hardship as contemplated by section 212(a)(9)(B)(v) of the Act.

All stated elements of hardship to the applicant's husband, should he reside in Mexico, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will suffer extreme hardship should he join her in Mexico. 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 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.