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



U.S. Citizenship  
and Immigration  
Services

H6



SEP 10 2010

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
[Redacted] (relates)

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 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 his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated December 9, 2007.

On appeal, the applicant asserts that prolonged separation from his wife will create extreme hardship. *Statement on Form I-290B*, dated December 26, 2007.

The record contains, in pertinent part, statements from the applicant's wife, the applicant's mother-in-law, and friends of the applicant and his wife, and; a letter from a counselor regarding the applicant and his wife. The applicant submitted Form I-290B with an indication that he is represented by counsel. However, the applicant has not provided a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, and thus his representative is not recognized in the present proceeding. The AAO considers the short statement on Form I-290B to be a statement from the applicant, and it has been considered on appeal. Form I-290B indicates that a brief and/or additional evidence would be submitted to the AAO within 30 days. The appeal was filed on or about January 9, 2008. As of the date of the present decision, the AAO has not received any further correspondence or documentation from the applicant and the record is deemed complete. 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 1997 and remained without a lawful immigration status until approximately February 2007. Thus, he accrued unlawful presence from approximately April 1, 1997, the date the unlawful presence provisions in the Act took effect, until he departed in February 2007. This period totals over nine years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996)

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *In re 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. ██████ 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 wife states that she has spoken with a clinical counselor who is willing to assist her if the applicant is unable to return to the United States. *Statement from the Applicant’s Wife*, dated February 10, 2007. She describes the history of her relationship with the applicant, including that they married on October 29, 2004. *Id.* at 1. She indicates that they purchased a house together in 2003. *Id.* She explains that she and the applicant spent significant

time together, including attending church, visiting her mother and family, and taking short trips. *Id.* at 2. She expresses that she and the applicant wish to have a child. *Id.* She indicates that she worries about the applicant in Mexico, as he has no friends there anymore. *Id.* She states that she has not been eating or sleeping well in the applicant's absence. *Id.* at 3. She explains that all of her activities are family-oriented, and that she is enduring emotional hardship due to participating in the activities without the applicant. *Id.*

The applicant submits a letter from a Licensed Clinical Professional Counselor, Ms. [REDACTED] who discusses the relationship between the applicant and his wife. *Letter from Licensed Clinical Professional Counselor*, dated February 10, 2007. Ms. [REDACTED] provides that the applicant and his wife engage in all of their activities together, and that the applicant's wife has been depressed and anxious regarding the prospect of the applicant residing outside the United States. *Id.* at 1. She adds that the applicant and his wife do not wish to be separated as they go through pregnancy, delivery, and raising of children. *Id.* at 2. She indicates that the applicant's wife is concerned for her lack of ability to help maintain the applicant in Mexico or to afford traveling there to visit him. *Id.*

Ms. [REDACTED] states that the applicant will be unable to find employment in Mexico, yet the applicant and his wife have good jobs in the United States. *Id.* She indicates that all of the applicant's wife's family members reside in Illinois, and that they are close. *Id.*

The applicant's mother-in-law indicates that she fears the applicant's wife will fall into a deep depression should she be separated from the applicant. *Statement from the Applicant's Mother-in-Law*, dated February 21, 2007. She explains that the applicant's wife is very close with her family, and that she maintains regular contact. *Id.* at 1. The applicant's mother-in-law states that she is ready to help the applicant's wife at any time, but that she cannot take the applicant's place. *Id.*

Upon review, the applicant has not shown that his wife will endure extreme hardship should the present waiver application be denied. The applicant has not established that his wife will suffer 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 presents information regarding his wife's emotional state, and the AAO has carefully examined the statements from the applicant's wife and from Ms. [REDACTED]. It is evident that the applicant's wife has a close relationship with the applicant, and that their separation is causing her significant psychological hardship. However, the record does not distinguish her emotional difficulty from that which is expected when spouses reside apart due to inadmissibility. It is noted that the applicant's wife continues to have the support of a close family network in the United States, thus she is not left alone without the applicant's presence. The record further shows that the applicant's wife has the support of a counselor to address her emotional difficulty in the event of continued family separation.

The applicant has not asserted or shown that his wife is experiencing financial hardship in his absence. The applicant's wife indicated that they purchased a home in 2003, yet the applicant has

not submitted any evidence to show whether they currently pay a mortgage for the property, or whether the applicant's wife earns sufficient income to meet her needs.

The AAO acknowledges that the applicant's wife wishes to have a child with the applicant, and that separation hinders their efforts to do so. However, as discussed below, the applicant has not established that his wife would suffer extreme hardship should she join him in Mexico for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Thus, the applicant has not shown that his absence will cause him and his wife to delay having a child.

All elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that his wife will suffer extreme hardship should she reside in the United States until he is permitted to return.

The applicant has not shown that his wife will endure extreme hardship should she join him in Mexico. The applicant has not submitted any information or documentation regarding his experience in Mexico since he returned there. Thus, the record lacks explanation of the circumstances his wife may encounter should she join him, such as economic or living conditions. As noted above, the applicant has not submitted any evidence regarding the home that he and his wife purchased, or documentation of his wife's income. Thus, the AAO is unable to assess any economic detriment that may occur should the applicant's wife depart the United States and reside in Mexico.

The AAO recognizes that the applicant's wife is very close with her family members in the United States, and that she would suffer emotional hardship should she reside apart from them. It is evident that she would further become separated from her church and community. However, these consequences are common and anticipated results when an individual joins a spouse abroad due to inadmissibility. The applicant has not shown by a preponderance of the evidence that his wife will encounter emotional hardship that can be distinguished from that which is ordinarily expected in similar circumstances.

The AAO has considered all stated elements of hardship to the applicant's wife, should she reside in Mexico, in aggregate. Based on the foregoing, the applicant has not shown that his wife will suffer extreme hardship should she join him in Mexico. Accordingly, the applicant has not established that denial of the present waiver application "will result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act.

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

In 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.