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Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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YAKIMA, WA 98901

SEP 10 2010

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

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,

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 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 January 21, 2008.

On appeal, the applicant's husband asserts that he is experiencing mental and physical health problems and he wishes for the applicant to return to the United States so she can care for him and serve as a mother figure for his two children. *Statement from the Applicant's Husband on Form I-290B*, dated February 19, 2008.

The record contains a statement from the applicant's husband; copies of medical documents for the applicant's husband, and; a bill for the applicant's husband. 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 waiver application. 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 June 2000, and she remained until or about November 2006. Accordingly, she accrued over six 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 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.

On appeal, the applicant’s husband states that he has had to see a cardiologist, a psychologist, and another physician. *Statement from the Applicant’s Husband on Form I-290B* at 2. He explains that he has had to go to a hospital four times since December 2007. *Id.* He states that his doctor informed him that his high stress level is not good for his heart. *Id.* He indicates that he is under stress due to separation from the applicant. *Id.* He adds that he has custody of his two children from another relationship, and that they are enduring hardship due to seeing his health deteriorate. *Id.* He states that he is available for his children, but that they wish for the applicant to return to the United States to help them with school and in life. *Id.*

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 AAO has carefully examined the medical documentation provided for the applicant's husband. The documents show that he has sought treatment in an emergency room on multiple occasions for symptoms including low back pain, a rash, anxiety, arthralgias, numbness and tingling of his face and lower extremities, cold feet, palpitations, shortness of breath, trembling, and hot sensations in his chest. *January 9, 2008 Report from Yakima Valley Farm Workers Clinic*, dated January 9, 2008. He received a steroid injection in his arm for itching on December 11, 2007. *Id.* A medical professional noted that he had no history of anxiety, but that over the few weeks following the steroid injection he developed "pretty severe anxiety." *Id.* at 1. He visited an emergency room on December 23 and 25, 2007, and cardiac etiology was ruled out. *Id.* Other medical tests revealed results within normal limits, including a chest x-ray, an EKG, and a cardiac enzyme test. *December 28, 2007 Report from Yakima Valley Farm Workers Clinic*, dated December 28, 2007. The medical professional noted that the applicant's husband had social stressors including the applicant's absence and immigration difficulties, as well as a custody conflict with the mother of his children. *Report from Yakima Valley Farm Workers Clinic* at 1. The applicant was referred back to his primary care physician to further manage his anxiety. *Prior Report from Yakima Valley Farm Workers Clinic* at 1. A second medical professional posited that the applicant's husband's anxiety was "possibly an adverse reaction to steroid injection," but noted that he had "some psychosocial stressors." *January 9, 2008 Report from Yakima Valley Farm Workers Clinic* at 2.

These reports clearly reflect that the applicant's husband has experienced significant anxiety for which he has sought treatment. However, the record does not show that he has serious physical health problems. While the applicant's husband expressed that he wishes for the applicant to care for him, the medical documentation does not reflect that he suffers from conditions that require the applicant's assistance, or that he cannot continue his present medical care in the applicant's absence.

The medical reports do not provide a clear indication of the source of the applicant's husband's anxiety. It is evident that he is experiencing emotional hardship due to separation from the applicant. Yet the reports do not provide a conclusion regarding whether his heightened anxiety was, at least in part, caused by a reaction to his steroid injection for itching. Nor does the record show whether his anxiety has subsided to any degree as time has passed after the injection.

As noted above, the AAO examines the information and documentation provided by the applicant to determine if the record distinguishes her husband's hardship from that which is commonly experienced when an individual resides apart from a spouse due to inadmissibility. The medical documentation provided by the applicant is not sufficiently conclusive to show that her husband is suffering extreme hardship in her absence.

The applicant has provided little additional evidence to show that her husband will endure extreme hardship should he remain in the United States. The statement from her husband on the Form I-290B is brief and does not describe unusual factors of hardship.

The applicant's husband references hardships that will be experienced by his two children from a prior relationship. The AAO considers all hardships to the applicant's husband in aggregate, and it is understood that difficulty experienced by his children will impact him. However, it is first noted that the applicant has not provided any evidence of her husband's children, such as birth certificates or other documentation to establish that he has custody. The AAO acknowledges that the applicant's husband's children will suffer hardship due to being separated from the applicant. Yet, the applicant's husband has not described difficulties they may encounter beyond the common consequences when a parent resides abroad due to inadmissibility. The applicant has not shown that hardship to her husband's children will elevate her husband's challenges to an extreme level.

The applicant has not presented other elements of hardship to her husband, should he remain in the United States. Considering all stated factors of hardship in aggregate, the applicant has not shown that her husband will suffer extreme hardship should he reside separately from her for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has not asserted that her husband will suffer hardship should he join her in Mexico until she is permitted to return to the United States. While the medical reports show that the applicant's husband is suffering from anxiety, the applicant has not shown that her husband would continue to suffer significant emotional difficulty should he be reunited with her. The applicant has not indicated that her husband would face difficulty related to his children should he relocate abroad. In the absence of clear assertions from the applicant, the AAO may not speculate as to the hardship the applicant's husband may endure. In proceedings regarding a 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. Thus, as the applicant has not stated that her husband will face challenges should he relocate to Mexico, she has not shown that such relocation will result in extreme hardship.

Based on the foregoing, the applicant has not shown that denial of the present waiver application "will 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.