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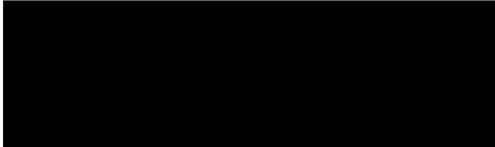
U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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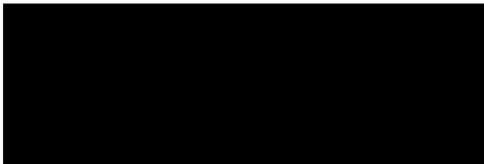


FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **SEP 13 2010**

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:



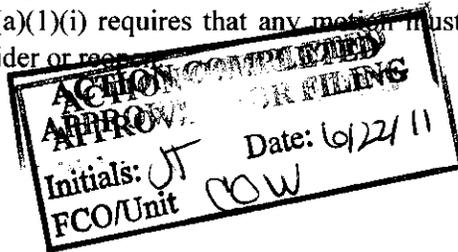
INSTRUCTIONS:

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,
Argum Sikka
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 23, 2008.

On appeal, counsel for the applicant asserts that the applicant's husband will endure extreme hardship should the present waiver application be denied, and that the applicant has presented positive discretionary factors. *Brief from Counsel*, dated March 25, 2008.

The record contains a brief from counsel; statements from the applicant's husband and educators for the applicant's children; documentation regarding the applicant's husband's employment; a medical letter for the applicant's husband; medical documentation for the applicant; documentation regarding the applicant's children's enrollment in school; copies of birth records for the applicant, the applicant's husband, and the applicant's father, and; a copy of the applicant's husband's naturalization certificate. 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 May 1992, and she remained until or about March 2007. Thus, she accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until she departed in March

2007. This period totals over nine years. 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.

In the present matter, the applicant’s husband states that he and the applicant have two young children, ages 12 and seven as of the date of his statement, March 24, 2008. *Statement from the Applicant’s Husband*, dated March 24, 2008. He provides that since the applicant’s departure he has been his children’s sole provider and caretaker. *Id.* at 1.

The applicant’s husband explains that he is a self-employed floor installer, and that his work day begins at 7:00am. *Id.* He states that he loses income if he is not present for the installations. *Id.* He indicates that it is essential for his family that he continue to perform his work well, and that taking

off work to care for his children has a negative effect on his work. *Id.* He states that he would lose their home if he loses his sole client, as he would be unable to pay their mortgage. *Id.*

The applicant's husband expresses that he has encountered difficulty balancing his professional and parental responsibilities since the applicant's departure. *Id.* He describes his activities with his children, including getting them ready for school and transporting them, participating in school activities, and attending appointments with teachers and doctors. *Id.* He provides that the applicant used to perform these tasks, and that he feels pressure in performing them in her absence. *Id.*

The applicant's husband states that his children have sadness due to missing the applicant, and that their emotional challenges impact him. *Id.* He notes that he has high blood pressure, and that his stress makes it worse. *Id.* He expresses that the applicant's absence is causing him psychological, emotional, and financial harm. *Id.* at 2. He previously stated that his children were devastated when they learned that the applicant had to depart the United States. *Prior Statement from the Applicant's Husband*, undated.

The applicant's husband previously stated that his children have been educated in the United States and that their physicians are here. *Id.* at 1. He provided that the only friends and family his children know are in the United States. *Id.* at 1. He indicated that the applicant is residing with her mother and she has no room for their children. *Id.* He stated that he and the applicant determined that their children should remain with him in the United States so that they can receive education and healthcare. *Id.*

He described the applicant's role and contribution in their household, and explained that he is unable to sleep or eat properly due to his concern for her absence. *Id.*

The applicant provides a letter from a physician for her husband, [REDACTED] who indicates that he treated the applicant's husband for hypertension in 2006 and 2007. *Letter from [REDACTED]* dated March 24, 2008. [REDACTED] adds that the applicant's husband mentioned that it is difficult for him to take care of his children which may be a cause of his high blood pressure. *Id.* at 1. [REDACTED] mentions that he also sees the applicant's two children. *Id.*

The applicant submits a medical report for her that reflects that she is experiencing "Depressive syndrome" due to being separated from her children. *Medical Letter for the Applicant*, dated March 30, 2007.

The applicant provides letters from teachers of her children who describe the applicant's involvement with her children's educational activities and posit that her absence will have a detrimental impact on her children's development.

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 indicated that he will endure hardship due to the need to act as a single parent for his two children. However, the applicant has not provided official documentation to show that she and her husband have children, such as their birth certificates. The lack of clear documentation of their children diminishes the weight given to the hardship the applicant's husband would experience related to them.

The applicant's husband indicated that the applicant's absence will cause financial hardship for him, largely due to the fact that his increased need to care for his children reduces the time he has available for work. The applicant's husband indicated that his job could be threatened, and the applicant provided a letter from her husband's client that reflects the significant responsibility her husband has. However, the applicant has not provided financial documentation for her husband to show his income or expenses. Thus, the AAO is unable to determine whether her husband would have ample resources to hire childcare services as needed. The record does not establish that the applicant's husband would face the loss of his employment or significant financial difficulty in the applicant's absence.

The applicant's husband expressed that he is facing difficulty balancing his parental and professional responsibilities, and that he is enduring emotional hardship as a result. The applicant has provided detailed explanation of the tasks she performed in the United States for her children and family, and it is evident that her husband faces arduous circumstances in meeting the needs of his children while maintaining his employment and business activities. The AAO acknowledges that acting as a single parent for two young children often creates significant physical and emotional challenges. It is further evident that young children often experience significant emotional difficulty when separated from a parent, and that such hardship has an impact on the children's parents. However, after careful examination of the explanation and evidence in the record, the AAO is unable to find that the applicant has distinguished her husband's circumstances from those often created for a spouse when an individual relocates abroad due to inadmissibility.

The AAO has examined the letter from [REDACTED] regarding the applicant's husband's physical health. While the applicant's husband has been treated for high blood pressure, the applicant has not shown that his condition is severe, or that it elevates his difficulty to an extreme level. The applicant provided a medical report that reflects that she is experiencing "Depressive syndrome" due to being separated from her children, and it is understood that her difficulty contributes to her husband's psychological hardship. However, the applicant's husband has not expressed that he is enduring unusual emotional hardship due to sharing in the applicant's difficulty.

All elements of hardship to the applicant's husband have been considered in aggregate. The applicant has not shown that, 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, he will endure extreme hardship.

The applicant has not asserted that her husband will suffer hardship should he join her in Mexico for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The AAO has examined all documentation in the record to assess the possible hardship the applicant's husband

may face should he relocate to Mexico. It is evident that he would be compelled to cease his business and employment activities in the United States, which would have an emotional and financial impact on him. He asserted that he and the applicant own a home, yet the applicant has not provided any documentation to support this fact, such to show that her husband may lose their home should he relocate to Mexico. The applicant's husband is a native of Mexico, thus he would not be faced with the challenges of adapting to an unfamiliar language or culture should he return there until the applicant is permitted to immigrate to the United States.

The applicant's husband previously addressed hardships his children would face in Mexico due to becoming separated from their community and activities in the United States. The AAO acknowledges that relocating to a foreign country presents significant challenges for a child. However, this is a common consequence when a family relocates abroad due to the inadmissibility of a parent. The applicant has not established that her children have particular needs that may not be met in Mexico.

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. Based on the foregoing, the applicant has not shown that her husband will experience extreme hardship should they reside in Mexico for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Accordingly, the applicant has not shown 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 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.